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Future work of the Permanent Forum, including issues considered by the Economic and Social Council and emerging issues

Study to examine conservation and indigenous peoples' human rights**

Note by the Secretariat

Summary

At its sixteenth session, the Permanent Forum on Indigenous Issues appointed Brian Keane and Elifuraha Laltaika, members of the Forum, to undertake a study to examine conservation and indigenous peoples' human rights, to be submitted to the Forum at its seventeenth session (see E/2017/43, para. 106).

* E/C.19/2018/1.

** The present document was submitted after the deadline so as to include the most recent information.

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I. Introduction

1. In the light of the volume of material that has been written on the issue, the present study does not represent an attempt at an in-depth re-examination of the challenges facing indigenous peoples in connection with conservation initiatives. The purpose, rather, is to consider the rights of indigenous peoples and the responsibilities of stakeholders and duty bearers in the context of conservation and to propose a plan of immediate action aimed at developing a set of conservation standards that would ensure recognition of, and respect for, the human and collective rights of indigenous peoples, as elaborated in the United Nations Declaration on the Rights of Indigenous Peoples, in conservation settings.

2. The present study was written in support of the recommendations made by the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples in her report on conservation and indigenous peoples' rights (see A/71/229) and of the framework principles on human rights and the environment developed by the Special Rapporteur of the Human Rights Council on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (see A/HRC/37/59, annex). The study is an attempt to build on the important work that has been carried out by non-governmental organizations such as Natural Justice, the International Institute for Environment and Development and the Forest Peoples Programme. The proposed programme of work is designed to reinforce and unify the efforts made by the International Union for Conservation of Nature and Natural Resources, bodies related to the Convention on Biological Diversity, United Nations agencies, funds and programmes and others to develop new approaches to conservation that recognize and support the human and collective rights of indigenous peoples.

II. Background

3. Since the creation of the first State-designated protected area, Yellowstone Park, in the United States of America in 1872, conservation interventions around the world have far too often resulted in gross violations of the rights of indigenous peoples, including through forced displacement from their territories; the destruction of livelihoods; the loss of access to lands, resources and sacred sites; the loss of culture; violence; and extrajudicial killings.

4. That model of conservation, which has excluded indigenous peoples and has been duplicated in conservation initiatives around the world, not only wreaks havoc on indigenous communities, but also undermines the very goals of conservation.

5. Research has increasingly and consistently demonstrated that recognizing the rights of indigenous peoples to their territories and resources is the most effective way to safeguard biological diversity, to ensure the sustainable use of natural resources and to protect the ecological integrity of critical ecosystems. The role of indigenous peoples in realizing the goals of conservation cannot be overstated: the lands and waters that they continue to manage contain over 80 per cent of Earth's biodiversity; the forests in demarcated indigenous territories are subject to less deforestation than those in protected areas; and the traditional knowledge systems and resource management strategies of indigenous peoples can play a key role in developing truly sustainable conservation strategies and policies.

6. In recent years, there has been growing recognition of the vital role that indigenous peoples play in conservation, and the conservation community has made efforts to address human rights issues. Nevertheless, violations of the rights of indigenous peoples in relation to conservation initiatives — including the establishment of protected areas, biodiversity protection strategies, forest management programmes and carbon sequestration projects — have continued. In the past year alone, the Permanent Forum on Indigenous Issues has received numerous reports of human rights abuses committed in the name of conservation, including violations affecting the Baka of Cameroon, the Basarwa of Botswana, the Maasai of Loliondo, United Republic of Tanzania, and the Mbuti in the Congo. At the time of writing, there are disturbing reports of the Senwger people being violently evicted from Embobut Forest in Kenya.

III. Rights, responsibilities and redress

A. Rights of indigenous peoples

7. In recent years, indigenous peoples have made significant gains in the national, regional and international recognition of their human and collective rights. This "body" of rights is enshrined in State constitutions and laws, in regional human rights jurisprudence, in the jurisprudence of United Nations human rights bodies, across a wide range of international instruments, including human rights and environmental instruments, and in binding and non-binding agreements. Those instruments include the International Bill of Human Rights; instruments focusing on indigenous peoples, such as the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization and the United Nations Declaration on the Rights of Indigenous Peoples; and the Rio Conventions, including their subsidiary protocols and voluntary guidelines.

8. The rights of indigenous peoples continue to be violated in the course of conservation initiatives, in particular the following rights set out in the United Nations Declaration on the Rights of Indigenous Peoples:

(a) Right to self-determination, to freely determine their political status and to freely pursue their economic, social and cultural development (art. 3);

(b) Right to self-government in matters relating to internal and local affairs (arts. 4, 5, 33 (1), 34 and 35);

(c) Right to free, prior and informed consent (arts. 18, 19, 29 (2) and (3) and 30 (2));

(d) Right to lands, territories and resources that indigenous peoples possess by reason of traditional ownership or other traditional occupation or use (arts. 8 (2), 10, 14, 15 (1), 16, 17, 18, 25 and 26 (1));

(e) Right to life, physical and mental integrity, liberty and security; right to live in freedom, peace and security as distinct peoples (arts. 2, 7, 8 (1), 10, 15 (2), 22 and 44);

(f) Right to the conservation and protection of the environment and the productive capacity of their lands, territories and resources (arts. 29 (1) and 41);

(g) Right to cultural and spiritual traditions, customs, heritage and traditional knowledge (arts. 9, 11, 12, 15 (1), 31 and 34);

(h) Right to traditional medicine and health practices and to the conservation of their medicinal plants, animals and minerals (art. 24);

(i) Right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development, to engage freely in traditional and other economic activities and to determine their own development priorities (arts. 21 and 23);

(j) Right to transboundary relationships (art. 36 (1));

(k) Right to use and maintain languages and knowledge (art. 13 (1));

(l) Right to establish and control educational systems and institutions (arts. 14 (1) and 15 (1));

(m) Right to non-discriminatory employment (art. 17);

(n) Right to redress for lands, territories and resources that are taken, occupied, used or damaged (arts. 8 (2), 11 (2), 20 (2), 28 (1), 32 and 40).

B. Responsibilities

9. Although States are considered the primary duty bearers under international human rights law, the relevant norms are increasingly considered to apply to non-State entities, including in accordance with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, which was presented to the Human Rights Council in 2011 by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/17/31, annex). In this context, all actors involved in conservation initiatives, including international organizations, non-governmental organizations, bilateral development agencies, businesses and philanthropic foundations, have a duty to respect the rights of indigenous peoples.

10. It is incumbent upon States to ensure that non-governmental organizations, private entities and others that implement conservation initiatives within their borders respect international human rights obligations and, where they do not, that affected communities have access to effective remedies. At the same time, non-governmental organizations and other entities that partner with States in conservation should not be complicit when States do not fulfil their duty to protect the human rights of indigenous peoples.

C. Redress

11. A number of international and regional redress mechanisms are available and have been used effectively by indigenous peoples affected by conservation initiatives, including State-based mechanisms, United Nations mechanisms and the regional human rights mechanisms of Africa, Europe and the Americas.

12. However, indigenous peoples continue to face a range of challenges in accessing justice through those mechanisms. Owing to racism, lack of political will, or failure to recognize the rights of indigenous peoples, State-based redress mechanisms are often unsympathetic to the plight of indigenous communities that are negatively affected by conservation initiatives. At the same time, owing to a lack of financial support or unfamiliarity with procedures, indigenous peoples are often unable to

access United Nations mechanisms and regional human rights mechanisms and, when those mechanisms issue decisions that are favourable to indigenous peoples, it is difficult to ensure that the decisions are actually implemented at the local level.

13. The Whakatane Mechanism is a non-judicial, conservation-focused mechanism that was established at the "Sharing power: a new vision for development" conference, held in Whakatane, New Zealand, in 2011 by the Commission on Environmental, Economic and Social Policy of the International Union for Conservation of Nature, in order to "assess the situation in different protected areas around the world and, where people are negatively affected, to propose solutions and implement them".[1] Pilot assessments based on the Mechanism have been conducted in three areas: Mount Elgon in western Kenya, Ob Luang National Park in northern Thailand, and Kahuzi-Biega National Park in the Democratic Republic of the Congo. The Mechanism should be further supported, as it has strong potential to grow into an accessible and cost-effective tool for resolving conflicts and to ensure that readily accessible redress mechanisms exist at the project level.

IV. Standards and guidance

14. For over four decades, the conservation community has engaged in dialogue on the importance of recognizing and respecting the rights of indigenous peoples in conservation initiatives. The International Union for Conservation of Nature first acknowledged the need to recognize indigenous peoples in relation to protected areas at the 12th meeting of its general assembly, held in Kinshasa in 1975. Since then, a number of initiatives have focused on the need for human rights and conservation-related standards and/or guidelines to be agreed upon and used by all actors involved in or affected by conservation. Those initiatives have given rise to a number of documents, including the following:

(a) "An appeal for a code of conduct for marine conservation" (journal article by practitioners and academic researchers, 2017);

(b) "Conservation standards: from rights to responsibilities" (International Institute for Environment and Development and Natural Justice, 2016);

(c) Environmental and Social Management System standards (version 2.0; International Union for Conservation of Nature, 2016);

(d) "Conservation and indigenous peoples in Mesoamerica: A guide" (International Union for Conservation of Nature and Indian Law Resource Center, 2015);

(e) Policy on conservation and human rights for sustainable development (International Union for Conservation of Nature, 2012);

(f) Bennett Code (Survival International, 2010);

(g) Guiding principles for evaluating the impacts of conservation interventions on human well-being (Conservation Initiative on Human Rights, 2009);

(h) Principles concerning human rights in conservation (Environmental Law Centre of the International Union for Conservation of Nature, 2009);

[1] See whakatane-mechanism.org/about-whakatane.

(i) International Union for Conservation of Nature resolution 4.056 on rights-based approaches to conservation (2008);

(j) Policy on social equity in conservation and sustainable use of natural resources (International Union for Conservation of Nature, 2000).

15. Recognizing the urgent need to develop a universally recognized set of standards for engaging in conservation efforts on the lands and waters of indigenous peoples, the Forum should urge States, United Nations agencies, funds and programmes, non-governmental organizations, international organizations, funders and indigenous peoples to engage in a collaborative process, building on the initiatives mentioned above, to articulate a dedicated set of standards that will ensure respect for the human and collective rights of indigenous peoples, to which State and non-State actors can become signatories and which is linked to a dedicated non-judicial redress mechanism (i.e., a revised version of the Whakatane Mechanism).

V. A way forward: indigenous peoples' rights and conservation summit, standards and mechanism

16. The Forum may wish to consider the following programme of work, to be carried out in consultation with the Special Rapporteur on the rights of indigenous peoples, the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and other relevant stakeholders, as appropriate:

2018

(a) Conduct background research and develop a framework for the standards; discuss progress within the framework of the Expert Mechanism on the Rights of Indigenous Peoples;

2019

(b) Hold an expert group meeting on conservation and indigenous peoples' rights;

(c) Recommend that the Specialist Group on Indigenous Peoples, Customary and Environmental Law and Human Rights within the Committee on Environmental, Economic and Social Policy of the International Union for Conservation of Nature, non-governmental organizations and other stakeholders, in consultation with the special rapporteurs of the United Nations, the Permanent Forum and the Expert Mechanism on the Rights of Indigenous Peoples, host regional meetings to discuss the standards and the Whakatane Mechanism;

(d) Circulate drafts of the standards and a proposal for a revised Whakatane Mechanism for international review;

2020

(e) Propose final input to the draft standards and revised Whakatane Mechanism;

(f) Develop tools and training courses to facilitate implementation of the standards (e.g., procedures relating to free, prior and informed consent, co-design processes);

(g) Convene a summit on indigenous peoples' rights and conservation, immediately before the World Conservation Congress of the International Union for Conservation of Nature, to formally adopt an indigenous peoples' rights and conservation framework (standards and mechanism) and to witness initial signatories.